

1 Ben F. Pierce Gore (SBN 128515)  
2 PRATT & ASSOCIATES  
3 1901 S. Bascom Avenue, Suite 350  
Campbell, CA 95008  
Telephone: (408) 429-6506  
Fax: (408) 369-0752  
[pgore@prattattorneys.com](mailto:pgore@prattattorneys.com)

5 (Co-counsel listed on signature page)

6 *Attorneys for Plaintiff*

E-FILING

ADR

FILED

APR 12 2012

RICHARD W. WICKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

B  
99  
See P  
51

7  
8 IN THE UNITED STATES DISTRICT COURT  
9  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 TRICIA OGDEN, individually and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 BUMBLE BEE FOODS, LLC,

17 Defendant.

Case No.

PSG  
12-01828  
CLASS ACTION AND REPRESENTATIVE  
ACTION

COMPLAINT FOR DAMAGES,  
EQUITABLE AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

20 Plaintiff, through her undersigned attorneys, brings this lawsuit against Bumble Bee  
21 Foods, LLC (“Bumble Bee” or “Defendant”) as to her own acts upon personal knowledge, and as  
22 to all other matters upon information and belief. In order to remedy the harm arising from  
23 Defendant’s illegal conduct, which has resulted in unjust profits, Plaintiff brings this action on  
24 behalf of a nationwide class of consumers who, within the last four years, purchased Bumble Bee  
25 products labeled “Rich in Natural Omega-3” or “Excellent Source Omega-3” (“Misbranded Food  
26 Products”).

1                    **INTRODUCTION**

2         1. Every day, millions of Americans purchase and consume packaged foods. Identical  
 3 federal and California laws require truthful, accurate information on the labels of packaged foods.  
 4 This case is about a company that flouts those laws. The law, however, is clear: misbranded  
 5 foods cannot legally be manufactured, held, advertised, distributed or sold. Misbranded food is  
 6 worthless as a matter of law, and purchasers of misbranded food are entitled to a refund of their  
 7 purchase price.

8         2. Bumble Bee produces a variety of seafood products, and it is best known for its tuna  
 9 products. Bumble Bee represents that it is North America's largest branded shelf-stable seafood  
 10 company. Bumble Bee products include canned and pouched tuna, salmon, shrimp, crab, clams,  
 11 oysters, sardines, mackerel, and chicken. Bumble Bee also sells ready-to-eat chicken salad,  
 12 seafood salad, tuna salad and tuna medley meal kits for such products as chicken salad, seafood  
 13 salad, tuna salad and tuna medley. Bumble Bee sells sardines and other seafood products under  
 14 such labels as Beach Cliff®, Brunswick® and King Oscar®.

15         3. Bumble Bee recognizes that health claims drive sales and actively promotes the  
 16 purported health benefits of its products, notwithstanding the fact that such promotion violated  
 17 California and federal law. For example, on its website Bumble Bee states:

18                      Nourishing Lifestyles  
 19                      Bumble Bee Promotes Healthy and Sustainable Lifestyles for Consumers

20                      Bumble Bee's core seafood products are an excellent and affordable source of  
 21 protein, nutrients and Omega 3 fatty acids. The healthy profile of our product  
 22 portfolio affords Bumble Bee a strong basis from which to support and encourage  
 23 healthy consumer lifestyles.

24                      <http://www.bumblebee.com/about/sustainability/nourishing-life>

25         4. On the website discussion of its King Oscar® brand, Bumble Bee goes even further in  
 26 promoting the health benefits of its sardine products, specifically focusing on Omega 3:

27                      More and more research suggests that Omega-3's may help:

- 28         • Promote heart health by reducing artery-clogging cholesterol and triglycerides (fats)  
 29                      in your bloodstream.

- 1     • Lower your risk of heart attack by regulating electrical activity.
- 2     • Protect against type-2 diabetes by positively influencing your metabolism and blood
- 3         pressure.
- 4     • Protect you from certain cancers, including breast cancer and leukemia.
- 5     • Benefit your immune system and improve inflammatory diseases such as rheumatoid
- 6         arthritis and psoriasis.
- 7     • Improve your mood and support mental health.
- 8     • Play a vital role in the development of your baby's eyes and brain – very important
- 9         for pregnant mothers.

10             All that good stuff and more from the Omega-3's in delicious fish. That's right, fish  
 11          are the best natural source of the Omega-3's your body needs most. Especially  
 12          coldwater fish such as brisling sardines, mackerel, herring, and salmon. Another big  
 13          reason why nutritionists will tell you to eat more seafood – at least twice a week. At  
 14          King Oscar, we say why stop there?

15          <http://www.kingoscar.com/health/omega-3>

16          5. Bumble Bee also makes health nutrient claims directly on the package of its products.  
 17          For example, the labels on several of Bumble Bee's products have a seal or logo stating  
 18          "excellent source of Omega 3" and "Rich in Natural Omega-3".

19          6. If a food manufacturer makes a claim on a food label, the label must meet certain legal  
 20          requirements that help consumers make informed choices and ensure that they are not misled. As  
 21          described more fully below, Defendant has made, and continues to make, false and deceptive  
 22          nutrient content claims in violation of federal and California laws that govern the types of  
 23          representations that can be made on food labels. These laws recognize that reasonable consumers  
 24          are likely to choose products claiming to have a health or nutritional benefit over otherwise  
 25          similar food products that do not claim such benefits. More importantly, these laws recognize  
 26          that the failure to disclose the presence of risk-increasing nutrients is deceptive because it  
 27          conveys to consumers the net impression that a food makes only positive contributions to a diet,  
 28          or does not contain any nutrients at levels that raise the risk of a diet-related disease or health-  
                 related condition.

29          7. Identical federal and California laws regulate the content of labels on packaged food.  
 30          The requirements of the federal Food Drug & Cosmetic Act ("FDCA") were adopted by the  
 31          California legislature in the Sherman Food Drug & Cosmetic Law (the "Sherman Law").  
 32          California Health & Safety Code § 109875, et seq. Under FDCA section 403(a), food is

1 "misbranded" if "its labeling is false or misleading in any particular," or if it does not contain  
 2 certain information on its label or in its labeling. 21 U.S.C. § 343(a).

3       8. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term  
 4 "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims  
 5 that might be technically true, but still misleading. If any one representation in the labeling is  
 6 misleading, then the entire food is misbranded, nor can any other statement in the labeling cure a  
 7 misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and  
 8 the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-*  
*9 Pathic Pharmacy*, 192 F.2d 62, 75 (9<sup>th</sup> Cir. 1951). Under the FDCA, it is not necessary to prove  
 10 that anyone was actually misled.

11       9. Other companies that sell similar products with similar Omega 3 nutrient content  
 12 claims have been found by FDA to be in violation of the laws concerning such claims. On July  
 13 15, 2011, the FDA sent a warning letter to Natural Guidance, LLC, informing the company of its  
 14 failure to comply with the requirements of the Federal Food Drug and Cosmetic Act ("FDCA")  
 15 and its regulations, all of which have been expressly adopted by California in its Sherman Law  
 16 (the "FDA Warning Letter," attached hereto as Exhibit 1).

17       10. The FDA Warning Letter to Natural Guidance, LLC, stated, in pertinent part:

18       This is to advise you that the U.S. Food and Drug Administration (FDA) reviewed  
 19 your websites [www.naturalguidance.com](http://www.naturalguidance.com)<sup>1</sup> and [www.salba.com](http://www.salba.com)<sup>2</sup>, as recently as July  
 20 2011, and has determined that your Salba® brand products are promoted for  
 21 conditions that cause the products to be drugs under section 201(g)(1)(B) of the  
 22 Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 321(g)(1)(B)]. The  
 23 therapeutic claims on your website establish that the products are drugs because they  
 24 are intended for use in the diagnosis, cure, mitigation, treatment or prevention of  
 25 disease in humans. The marketing of the products with these claims violates the Act.  
 26 You may find the Act and its implementing regulations through links on FDA's home  
 27 page at [www.fda.gov](http://www.fda.gov)<sup>3</sup>.

28       Some examples of claims taken from your website at [www.naturalguidance.com](http://www.naturalguidance.com)<sup>4</sup>,  
 include:  
 29         
 30         
 31         
 32         
 33         
 34         
 35         
 36         
 37         
 38         
 39         
 40         
 41         
 42         
 43         
 44         
 45         
 46         
 47         
 48         
 49         
 50         
 51         
 52         
 53         
 54         
 55         
 56         
 57         
 58         
 59         
 60         
 61         
 62         
 63         
 64         
 65         
 66         
 67         
 68         
 69         
 70         
 71         
 72         
 73         
 74         
 75         
 76         
 77         
 78         
 79         
 80         
 81         
 82         
 83         
 84         
 85         
 86         
 87         
 88         
 89         
 90         
 91         
 92         
 93         
 94         
 95         
 96         
 97         
 98         
 99         
 100         
 101         
 102         
 103         
 104         
 105         
 106         
 107         
 108         
 109         
 110         
 111         
 112         
 113         
 114         
 115         
 116         
 117         
 118         
 119         
 120         
 121         
 122         
 123         
 124         
 125         
 126         
 127         
 128         
 129         
 130         
 131         
 132         
 133         
 134         
 135         
 136         
 137         
 138         
 139         
 140         
 141         
 142         
 143         
 144         
 145         
 146         
 147         
 148         
 149         
 150         
 151         
 152         
 153         
 154         
 155         
 156         
 157         
 158         
 159         
 160         
 161         
 162         
 163         
 164         
 165         
 166         
 167         
 168         
 169         
 170         
 171         
 172         
 173         
 174         
 175         
 176         
 177         
 178         
 179         
 180         
 181         
 182         
 183         
 184         
 185         
 186         
 187         
 188         
 189         
 190         
 191         
 192         
 193         
 194         
 195         
 196         
 197         
 198         
 199         
 200         
 201         
 202         
 203         
 204         
 205         
 206         
 207         
 208         
 209         
 210         
 211         
 212         
 213         
 214         
 215         
 216         
 217         
 218         
 219         
 220         
 221         
 222         
 223         
 224         
 225         
 226         
 227         
 228         
 229         
 230         
 231         
 232         
 233         
 234         
 235         
 236         
 237         
 238         
 239         
 240         
 241         
 242         
 243         
 244         
 245         
 246         
 247         
 248         
 249         
 250         
 251         
 252         
 253         
 254         
 255         
 256         
 257         
 258         
 259         
 260         
 261         
 262         
 263         
 264         
 265         
 266         
 267         
 268         
 269         
 270         
 271         
 272         
 273         
 274         
 275         
 276         
 277         
 278         
 279         
 280         
 281         
 282         
 283         
 284         
 285         
 286         
 287         
 288         
 289         
 290         
 291         
 292         
 293         
 294         
 295         
 296         
 297         
 298         
 299         
 300         
 301         
 302         
 303         
 304         
 305         
 306         
 307         
 308         
 309         
 310         
 311         
 312         
 313         
 314         
 315         
 316         
 317         
 318         
 319         
 320         
 321         
 322         
 323         
 324         
 325         
 326         
 327         
 328         
 329         
 330         
 331         
 332         
 333         
 334         
 335         
 336         
 337         
 338         
 339         
 340         
 341         
 342         
 343         
 344         
 345         
 346         
 347         
 348         
 349         
 350         
 351         
 352         
 353         
 354         
 355         
 356         
 357         
 358         
 359         
 360         
 361         
 362         
 363         
 364         
 365         
 366         
 367         
 368         
 369         
 370         
 371         
 372         
 373         
 374         
 375         
 376         
 377         
 378         
 379         
 380         
 381         
 382         
 383         
 384         
 385         
 386         
 387         
 388         
 389         
 390         
 391         
 392         
 393         
 394         
 395         
 396         
 397         
 398         
 399         
 400         
 401         
 402         
 403         
 404         
 405         
 406         
 407         
 408         
 409         
 410         
 411         
 412         
 413         
 414         
 415         
 416         
 417         
 418         
 419         
 420         
 421         
 422         
 423         
 424         
 425         
 426         
 427         
 428         
 429         
 430         
 431         
 432         
 433         
 434         
 435         
 436         
 437         
 438         
 439         
 440         
 441         
 442         
 443         
 444         
 445         
 446         
 447         
 448         
 449         
 450         
 451         
 452         
 453         
 454         
 455         
 456         
 457         
 458         
 459         
 460         
 461         
 462         
 463         
 464         
 465         
 466         
 467         
 468         
 469         
 470         
 471         
 472         
 473         
 474         
 475         
 476         
 477         
 478         
 479         
 480         
 481         
 482         
 483         
 484         
 485         
 486         
 487         
 488         
 489         
 490         
 491         
 492         
 493         
 494         
 495         
 496         
 497         
 498         
 499         
 500         
 501         
 502         
 503         
 504         
 505         
 506         
 507         
 508         
 509         
 510         
 511         
 512         
 513         
 514         
 515         
 516         
 517         
 518         
 519         
 520         
 521         
 522         
 523         
 524         
 525         
 526         
 527         
 528         
 529         
 530         
 531         
 532         
 533         
 534         
 535         
 536         
 537         
 538         
 539         
 540         
 541         
 542         
 543         
 544         
 545         
 546         
 547         
 548         
 549         
 550         
 551         
 552         
 553         
 554         
 555         
 556         
 557         
 558         
 559         
 560         
 561         
 562         
 563         
 564         
 565         
 566         
 567         
 568         
 569         
 570         
 571         
 572         
 573         
 574         
 575         
 576         
 577         
 578         
 579         
 580         
 581         
 582         
 583         
 584         
 585         
 586         
 587         
 588         
 589         
 590         
 591         
 592         
 593         
 594         
 595         
 596         
 597         
 598         
 599         
 600         
 601         
 602         
 603         
 604         
 605         
 606         
 607         
 608         
 609         
 610         
 611         
 612         
 613         
 614         
 615         
 616         
 617         
 618         
 619         
 620         
 621         
 622         
 623         
 624         
 625         
 626         
 627         
 628         
 629         
 630         
 631         
 632         
 633         
 634         
 635         
 636         
 637         
 638         
 639         
 640         
 641         
 642         
 643         
 644         
 645         
 646         
 647         
 648         
 649         
 650         
 651         
 652         
 653         
 654         
 655         
 656         
 657         
 658         
 659         
 660         
 661         
 662         
 663         
 664         
 665         
 666         
 667         
 668         
 669         
 670         
 671         
 672         
 673         
 674         
 675         
 676         
 677         
 678         
 679         
 680         
 681         
 682         
 683         
 684         
 685         
 686         
 687         
 688         
 689         
 690         
 691         
 692         
 693         
 694         
 695         
 696         
 697         
 698         
 699         
 700         
 701         
 702         
 703         
 704         
 705         
 706         
 707         
 708         
 709         
 710         
 711         
 712         
 713         
 714         
 715         
 716         
 717         
 718         
 719         
 720         
 721         
 722         
 723         
 724         
 725         
 726         
 727         
 728         
 729         
 730         
 731         
 732         
 733         
 734         
 735         
 736         
 737         
 738         
 739         
 740         
 741         
 742         
 743         
 744         
 745         
 746         
 747         
 748         
 749         
 750         
 751         
 752         
 753         
 754         
 755         
 756         
 757         
 758         
 759         
 760         
 761         
 762         
 763         
 764         
 765         
 766         
 767         
 768         
 769         
 770         
 771         
 772         
 773         
 774         
 775         
 776         
 777         
 778         
 779         
 780         
 781         
 782         
 783         
 784         
 785         
 786         
 787         
 788         
 789         
 790         
 791         
 792         
 793         
 794         
 795         
 796         
 797         
 798         
 799         
 800         
 801         
 802         
 803         
 804         
 805         
 806         
 807         
 808         
 809         
 810         
 811         
 812         
 813         
 814         
 815         
 816         
 817         
 818         
 819         
 820         
 821         
 822         
 823         
 824         
 825         
 826         
 827         
 828         
 829         
 830         
 831         
 832         
 833         
 834         
 835         
 836         
 837         
 838         
 839         
 840         
 841         
 842         
 843         
 844         
 845         
 846         
 847         
 848         
 849         
 850         
 851         
 852         
 853         
 854         
 855         
 856         
 857         
 858         
 859         
 860         
 861         
 862         
 863         
 864         
 865         
 866         
 867         
 868         
 869         
 870         
 871         
 872         
 873         
 874         
 875         
 876         
 877         
 878         
 879         
 880         
 881         
 882         
 883         
 884         
 885         
 886         
 887         
 888         
 889         
 890         
 891         
 892         
 893         
 894         
 895         
 896         
 897         
 898         
 899         
 900         
 901         
 902         
 903         
 904         
 905         
 906         
 907         
 908         
 909         
 910         
 911         
 912         
 913         
 914         
 915         
 916         
 917         
 918         
 919         
 920         
 921         
 922         
 923         
 924         
 925         
 926         
 927         
 928         
 929         
 930         
 931         
 932         
 933         
 934         
 935         
 936         
 937         
 938         
 939         
 940         
 941         
 942         
 943         
 944         
 945         
 946         
 947         
 948         
 949         
 950         
 951         
 952         
 953         
 954         
 955         
 956         
 957         
 958         
 959         
 960         
 961         
 962         
 963         
 964         
 965         
 966         
 967         
 968         
 969         
 970         
 971         
 972         
 973         
 974         
 975         
 976         
 977         
 978         
 979         
 980         
 981         
 982         
 983         
 984         
 985         
 986         
 987         
 988         
 989         
 990         
 991         
 992         
 993         
 994         
 995         
 996         
 997         
 998         
 999         
 1000         
 1001         
 1002         
 1003         
 1004         
 1005         
 1006         
 1007         
 1008         
 1009         
 1010         
 1011         
 1012         
 1013         
 1014         
 1015         
 1016         
 1017         
 1018         
 1019         
 1020         
 1021         
 1022         
 1023         
 1024         
 1025         
 1026         
 1027         
 1028         
 1029         
 1030         
 1031         
 1032         
 1033         
 1034         
 1035         
 1036         
 1037         
 1038         
 1039         
 1040         
 1041         
 1042         
 1043         
 1044         
 1045         
 1046         
 1047         
 1048         
 1049         
 1050         
 1051         
 1052         
 1053         
 1054         
 1055         
 1056         
 1057         
 1058         
 1059         
 1060         
 1061         
 1062         
 1063

1 "Omega-3s Benefits ...  
 2 • Child Depression  
 3 • Breast, Colon, and Prostate Cancer  
 4 • Coronary Heart Disease  
 5 • Diabetes management  
 6 • Cardiovascular Heart Disease"

7  
 8 Your Salba® brand products are not generally recognized as safe and effective for the  
 9 above referenced uses and therefore, the products are new drugs as defined in section  
 10 201(p) of the Act [21 U.S.C. § 321(p)]. Under section 505(a) of the Act [21 U.S.C. §  
 11 355(a)], a new drug may not be legally marketed in the U.S. without an approved  
 12 New Drug Application (NDA). FDA approves new drugs on the basis of scientific  
 13 data submitted by a drug sponsor to demonstrate that the drug is safe and effective.

14 Furthermore, because your Salba® brand products are offered for conditions that are  
 15 not amenable to self-diagnosis and treatment by individuals who are not medical  
 16 practitioners; adequate directions for use cannot be written so that a layperson can use  
 17 these products safely for their intended uses. Thus, your products are also misbranded  
 18 under section 502(f)(1) of the Act [21 U.S.C. § 352 (f)(1)] in that the labeling for  
 19 these drugs fails to bear adequate directions for use.

20 Misbranded Products

21 Even if your Salba products were not unapproved new drugs, your Salba Whole Seed  
 22 Super-grain – 16 oz., Salba Ground Seed-9.5 oz., Salba Seed Oil (12oz), Salba Seed  
 23 Oil Softgels, and Salba Whole Food Bars (Cranberry Nut, Mixed Berry, and Tropical  
 24 Fruit) would be misbranded under section 403 of the Act [21 U.S.C. 343] because  
 25 their labeling includes unauthorized nutrient content claims. A claim that  
 26 characterizes the level of a nutrient which is of the type required to be in the labeling  
 27 of the food must be made in accordance with an FDA regulation authorizing the use  
 28 of such a claim. Characterizing the level of a nutrient in food labeling of a product  
 without complying with specific requirements pertaining to nutrient content claims  
 for that nutrient misbrands the product under section 403(r)(1)(A) of the Act.

1. Nutrient content claims that use the defined terms "rich in," "high," or "excellent  
 2 source of" may be used in the labeling of a food only if the food contains 20 percent  
 3 or more of the daily value (DV) of that nutrient per reference amount customarily  
 4 consumed (RACC), as required by 21 CFR 101.54(b)(1). Such claims may not be  
 5 made about a nutrient for which there is no established DV.

6  
 7 However, your website, [www.naturalguidance.com](http://www.naturalguidance.com)<sup>7</sup>, includes such a claim for  
 8 specific nutrients even though the food does not contain 20 percent or more of the DV  
 9 per RACC of these nutrients, in accordance with 21 CFR 101.54(b)(1):  
 10  
 11 ...

12 2. Although various nutrient content claims for ALA, DHA, and EPA omega-3 fatty  
 13 acids have been statutorily authorized through the notification procedure in section  
 14 403(r)(3)(C) of the Act [21 U.S.C. § 343(r)(3)(C)], the claims for Omega-3 on your  
 15

1 websites do not meet the requirements for any of these claims. Specifically, among  
2 other requirements, the claims authorized under the notification procedure must  
3 specify whether the claim is referring to ALA, DHA, or EPA omega-3 fatty acids.<sup>1</sup>

4 The following are examples of unauthorized Omega-3 claims on your website,  
5 www.salba.com<sup>8</sup>, which can be found on each product's webpage:

6 Salba Seed Oil (12 oz.) and Salba Seed Oil Softgels (90 ct.)

- 7 • “[N]ature's richest source of Omega-3s.”

8 Salba Whole Food Bars (Tropical Fruit Cranberry Nut, and Mixed Berry)

- 9 • “Salba - nature's richest plant-based source of Omega-3s...”

10 In addition, the following are examples of unauthorized Omega-3 claims on your  
11 website, www.naturalguidance.com<sup>9</sup>, which can be found on each product's webpage:

12 Salba Whole Food Bars (Tropical Fruit, Cranberry Nut, and Mixed Berry)

- 13 • “Salba is nature's richest vegetarian source of ... omega-3s.”

14 Salba Ground Seed - 9.5 oz. and Salba Whole Seed Super-Grain – 16 oz.

- 15 • “Richest Source of Omega-3s ... in Nature.”

16 11. The Omega 3 claims listed above that are on Bumble Bee's King Oscar website  
17 establish that Bumble Bee's products are drugs under section 201(g)(1)(B) of the FDCA [21  
18 U.S.C. § 321(g)(1)(B)], because they are intended for use in the diagnosis, cure, mitigation,  
19 treatment or prevention of disease. However, Bumble Bee's products are not generally  
20 recognized as safe and effective for the above referenced uses and, therefore, the products are  
21 “new drugs” as defined by section 201(p) of the FDCA [21 U.S.C. § 321(p)]. A new drug may  
22 not be legally marketed in the United States without prior approval from the FDA as described in  
23 section 505(a) of the FDCA [21 U.S.C. § 355(a)]. Bumble Bee's marketing of its products with  
24 these claims violates the FDCA. Further, because Bumble Bee's products are offered for  
25 conditions that are not amenable to self-diagnosis and treatment by individuals who are not  
26 medical practitioners, adequate directions for use cannot be written so that a layperson can use  
27 these products safely for their intended uses. As such, Bumble Bee's products are misbranded  
28 under section 502(f)(1) of the FDCA [21 U.S.C. § 352(f)(1)] in that the labeling for its drugs fails

1 to bear adequate directions for use.

2       12. Bumble Bee's products are also misbranded under Section 403 of the FDCA [21  
 3 U.S.C. 343] because their labeling includes unauthorized Omega 3 nutrient content claims.  
 4 Bumble Bee has made and continues to make food label claims that are prohibited by federal and  
 5 California law. Bumble Bee has made, and continues to make, food label claims that are  
 6 prohibited by federal and California law. Under federal and California law, Defendant's  
 7 misbranded food products cannot legally be manufactured, advertised, distributed, held or sold.  
 8 Defendant's false and misleading labeling practices stem from their global marketing strategy.  
 9 Thus, the violations and misrepresentations are similar across product labels and product lines.

10     13. Defendant's violations of law are numerous and include: (1) the illegal advertising,  
 11 marketing, distribution, delivery and sale of Defendant's Misbranded Food Products to  
 12 consumers; (2) the failure to properly disclose the high levels of fat, saturated fat and cholesterol  
 13 in their Misbranded Food Products on the Misbranded Food Products' packaging and labeling as  
 14 required by law; and (3) the failure to include statements on the Misbranded Food Products  
 15 packaging and labeling that are mandated by law.

#### PARTIES

17     14. Plaintiff Tricia Ogden is a resident of San Jose, California who purchased Defendant's  
 18 Misbranded Food Products in California during the four (4) years prior to the filing of this  
 19 Complaint (the "Class Period").

20     15. Defendant Bumble Bee is a Delaware corporation with its principal place of business  
 21 at 9655 Granite Ridge Dr., Suite 100, San Diego, CA 92123.

22     16. Defendant is a leading producer of retail seafood products. It sells its misbranded food  
 23 products to consumers through grocery and other retail stores throughout the United States and  
 24 California.

#### JURISDICTION AND VENUE

25     17. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)  
 26 because this is a class action in which: (1) there are over 100 members in the proposed class;  
 27

1 (2) members of the proposed class have a different citizenship from Defendants; and (3) the  
 2 claims of the proposed class members exceed \$5,000,000 in the aggregate.

3       18. The Court has jurisdiction over the federal claim alleged herein pursuant to 28 U.S.C.  
 4 § 1331, because it arises under the laws of the United States.

5       19. The Court has jurisdiction over the California claims alleged herein pursuant to 28  
 6 U.S.C. § 1367, because they form part of the same case or controversy under Article III of the  
 7 United States Constitution.

8       20. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28  
 9 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is  
 10 between citizens of different states.

11       21. The Court has personal jurisdiction over Defendant because a substantial portion of  
 12 the wrongdoing alleged in this Complaint occurred in California, Defendant is authorized to do  
 13 business in California, has sufficient minimum contacts with California, and otherwise  
 14 intentionally avails itself of the markets in California through the promotion, marketing and sale  
 15 of merchandise, sufficient to render the exercise of jurisdiction by this Court permissible under  
 16 traditional notions of fair play and substantial justice.

17       22. Because a substantial part of the events or omissions giving rise to these claims  
 18 occurred in this District and because the Court has personal jurisdiction over Defendants, venue is  
 19 proper in this Court pursuant to 28 U.S.C. § 1331(a) and (b).

#### FACTUAL ALLEGATIONS

##### A. Identical California And Federal Laws Regulate Food Labeling

23       23. Food manufacturers are required to comply with federal and state laws and  
 24 regulations that govern the labeling of food products. First and foremost among these is the  
 25 Federal Food, Drug and Cosmetics Act (“FDCA”) and its labeling regulations, including those set  
 forth in 21 C.F.R. § 101.

26       24. Pursuant to the Sherman Law, California has expressly adopted the federal labeling  
 27 requirements as its own and indicated that “[a]ll food labeling regulations and any amendments to  
 28 those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on

1 or after that date shall be the food regulations of this state.” California Health & Safety Code  
 2 § 110100.

3       25. In addition to its blanket adoption of federal labeling requirements, California has  
 4 also enacted a number of laws and regulations that adopt and incorporate specific enumerated  
 5 federal food laws and regulations. For example, food products are misbranded under California  
 6 Health & Safety Code § 110660 if their labeling is false and misleading in one or more  
 7 particulars; are misbranded under California Health & Safety Code § 110665 if their labeling fails  
 8 to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and  
 9 regulations adopted thereto; are misbranded under California Health & Safety Code § 110670 if  
 10 their labeling fails to conform with the requirements for nutrient content and health claims set  
 11 forth in 21 U.S.C. § 343(r) and regulations adopted thereto; are misbranded under California  
 12 Health & Safety Code § 110705 if words, statements and other information required by the  
 13 Sherman Law to appear on their labeling are either missing or not sufficiently conspicuous; are  
 14 misbranded under California Health & Safety Code § 110735 if they are represented as having  
 15 special dietary uses but fail to bear labeling that adequately informs consumers of their value for  
 16 that use; and are misbranded under California Health & Safety Code § 110740 if they contain  
 17 artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose  
 18 that fact on their labeling.

19       **B. Defendant's Food Products Are Misbranded**

20       26. Pursuant to Section 403 of the FDCA, a claim that characterizes the level of a nutrient  
 21 in a food is a “nutrient content claim” that must be made in accordance with the regulations that  
 22 authorize the use of such claims. 21 U.S.C. § 343(r)(1)(A). California expressly adopted the  
 23 requirements of 21 U.S.C. § 343(r) in § 110670 of the Sherman Law.

24       27. Nutrient content claims are claims about specific nutrients contained in a product.  
 25 They are typically made on the front of packaging in a font large enough to be read by the  
 26 average consumer. Because these claims are relied upon by consumers when making purchasing  
 27 decisions, the regulations govern what claims can be made in order to prevent misleading claims.  
 28

1       28. Section 403(r)(1)(A) of the FDCA governs the use of expressed and implied nutrient  
 2 content claims on labels of food products that are intended for sale for human consumption. *See*  
 3 21 C.F.R. § 101.13.

4       29. An “expressed nutrient content claim” is defined as any direct statement about the  
 5 level (or range) of a nutrient in the food (*e.g.*, “low sodium” or “contains 100 calories”). *See* 21  
 6 C.F.R. § 101.13(b)(1).

7       30. An “implied nutrient content claim” is defined as any claim that: (i) describes the  
 8 food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a  
 9 certain amount (*e.g.*, “high in oat bran”); or (ii) suggests that the food, because of its nutrient  
 10 content, may be useful in maintaining healthy dietary practices and is made in association with an  
 11 explicit claim or statement about a nutrient (*e.g.*, “healthy, contains 3 grams (g) of fat”). 21  
 12 C.F.R. § 101.13(b)(2)(i-ii).

13      **C. Defendant Makes Unlawful Omega 3 Nutrient Content Claims**

14       31. Where a particular nutrient does not have an established daily value (DV) under FDA  
 15 regulations, food producers may not state on their food labels that their food product is a “good  
 16 source” of the nutrient, or use a comparable phrase, such as “excellent source” or “rich in.” 21  
 17 C.F.R. 101.54.

18       32. Federal and California regulations regulate omega 3 claims as a particular type of  
 19 nutrient content claim. Because omega 3 does not have an established daily value (DV), food  
 20 producers may not state on their labels that their products are a “good source” of Omega 3, or use  
 21 a synonym conveying the same message. 21 CFR 101.54. If food producers employ an Omega 3  
 22 nutrient content claim, the claim must have been statutorily authorized and must specify whether  
 23 the claim is referring to ALA, DHA, or EPA omega 3 fatty acids.

24       33. Defendant has violated 21 C.F.R. § 101.54 by representing that its products are an  
 25 “excellent source” of omega 3 or “rich in” omega 3 and by failing to specify whether its omega 3  
 26 nutrient content claims are referring to ALA, DHA or EPA omega 3 fatty acids. For example,  
 27 certain Bumblebee products claim to be an “excellent source of Omega 3” or “naturally rich in

1 Omega 3" but they fail to disclose that Omega 3 has no established Daily Value pursuant to FDA  
 2 regulations. Thus, these products violate 21 C.F.R. § 101.54.

3       34. The types of misrepresentations made above would be considered by a reasonable  
 4 consumer when deciding to purchase Defendant's products. The failure to comply with the  
 5 labeling requirements of 21 C.F.R. § 101.54 renders Defendant's products misbranded as a matter  
 6 of federal and California law. Misbranded products cannot be legally sold and are legally  
 7 worthless.

8       35. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims,  
 9 which California has expressly adopted. *See California Health & Safety Code § 110100.* 21  
 10 C.F.R. § 101.13 requires that manufacturers include certain disclosures when a nutrient claim is  
 11 made and, at the same time, the product contains certain levels of unhealthy ingredients, such as  
 12 fat and sodium.

13       36. 21 C.F.R. § 101.13(h)(1) provides that: "If a food ... contains more than 13.0 g of fat,  
 14 4.0 g of saturated fat, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference  
 15 amount customarily consumed, per labeled serving, or, for a food with a reference amount  
 16 customarily consumed of 30 g or less ... per 50 g ... then that food must bear a statement  
 17 disclosing that the nutrient exceeding the specified level is present in the food...."

18       37. 21 C.F.R. § 101.13 also sets forth the manner in which that disclosure must be made,  
 19 as follows:

20           (4)(i) The disclosure statement "See nutrition information for \_\_\_\_ content" shall  
 21 be in easily legible boldface print or type, in distinct contrast to other printed or  
 22 graphic matter, and in a size no less than that required by §101.105(i) for the net  
 23 quantity of contents statement, except where the size of the claim is less than two  
 24 times the required size of the net quantity of contents statement, in which case the  
 disclosure statement shall be no less than one-half the size of the claim but no  
 smaller than one-sixteenth of an inch, unless the package complies with  
 §101.2(c)(2), in which case the disclosure statement may be in type of not less  
 than one thirty-second of an inch.

25           (ii) The disclosure statement shall be immediately adjacent to the nutrient content  
 26 claim and may have no intervening material other than, if applicable, other  
 27 information in the statement of identity or any other information that is required  
 28 to be presented with the claim under this section (e.g., see paragraph (j)(2) of this  
 section) or under a regulation in subpart D of this part (e.g., see §§101.54 and  
 101.62). If the nutrient content claim appears on more than one panel of the label,  
 the disclosure statement shall be adjacent to the claim on each panel except for the

1 panel that bears the nutrition information where it may be omitted.

2       38. To appeal to consumer preferences, Bumble Bee has repeatedly made unlawful  
3 nutrient content claims on products containing disqualifying levels of fat, sodium and cholesterol.  
4 These nutrient content claims were unlawful because they failed to include disclosure statements  
5 required by law that are designed to inform consumers of the inherently unhealthy nature of those  
6 products in violation of 21 C.F.R. § 101.13(h), which has been incorporated in California's  
7 Sherman Law.

8       39. Certain Bumble Bee food products bearing the "excellent source of Omega 3" and  
9 "Rich in Natural Omega-3" labels make such claims despite disqualifying levels of unhealthy  
10 components without proper disclosure. For example, Bumble Bee's "Tuna Salad Original with  
11 Crackers Kit" has eighteen grams of fat per labeled serving but does not bear a statement that fat  
12 exceeding the specified level is present. As another example, Bumble Bee's "King Oscar  
13 Sardines Mediterranean Style" have 110 milligrams of cholesterol per labeled serving but do not  
14 bear a statement that cholesterol exceeding the specified level is present. The failure to include  
15 the required disclosure statement renders the products at issue misbranded as a matter of law.  
16 Misbranded products cannot be legally held or sold and are legally worthless.

17       40. These regulations are intended to ensure that consumers are not misled to believe that  
18 a product that claims, for instance, to be an excellent source of Omega 3, but actually has  
19 unhealthy levels of fat or cholesterol, is a healthy choice, because of the presence of Omega 3.

20       41. Plaintiff did not know, and had no reason to know, that Defendant's Misbranded Food  
21 Products were misbranded, and bore nutrient claims despite failing to meet the requirements to  
22 make those nutrient claims. Plaintiff was equally unaware that Defendant's Misbranded Food  
23 Products contained one or more nutrients like fat, sodium, or cholesterol that, according to the  
24 FDA, "may increase the risk of disease or health related condition that is diet related."

25       42. Based on the fat and cholesterol content of these products, pursuant to federal and  
26 California law, Bumble Bee must include a warning statement adjacent to the Omega 3 nutrient  
27 claim that informs consumers of the high levels of fat or cholesterol. No such fat or cholesterol

1 disclosure statement currently exists on these products. Therefore, they are misbranded as a  
 2 matter of federal and California law and cannot be sold because they are legally worthless.

3 **D. Defendant Has Violated California Law**

4 43. Defendant has violated California Health & Safety Code § 110390, which makes it  
 5 unlawful to disseminate false or misleading food advertisements, including statements on  
 6 products and product packaging or labeling or any other medium used to directly or indirectly  
 7 induce the purchase of a food product.

8 44. Defendant has violated California Health & Safety Code § 110395, which makes it  
 9 unlawful to manufacture, sell, deliver, hold or offer to sell any falsely advertised food.

10 45. Defendant has violated California Health & Safety Code §§ 110398 and 110400,  
 11 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any  
 12 food that has been falsely advertised.

13 46. Defendant has violated California Health & Safety Code § 110660 because its  
 14 labeling is false and misleading in one or more ways, as follows:

15       a. Defendant's Misbranded Food Products are misbranded under California Health  
 16 & Safety Code § 110665 because its labeling fails to conform to the requirements for nutrient  
 17 labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted thereto;

18       b. Defendant's Misbranded Food Products are misbranded under California Health  
 19 & Safety Code § 110670 because its labeling fails to conform with the requirements for nutrient  
 20 content and health claims set forth in 21 U.S.C. § 343(r) and the regulations adopted thereto; and

21       c. Defendant's Misbranded Food Products are misbranded under California Health  
 22 & Safety Code § 110705 because words, statements and other information required by the  
 23 Sherman Law to appear on their labeling either are missing or not sufficiently conspicuous.

24 47. Defendant has violated California Health & Safety Code § 110760, which makes it  
 25 unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is  
 26 misbranded.

27 48. Defendant's Misbranded Food Products are misbranded under California Health &  
 28 Safety Code § 110755 because they purport to be or are represented as for special dietary uses,

1 and their labels fail to bear such information concerning their vitamin, mineral and other dietary  
 2 properties as the Secretary determines to be, and by regulations prescribes as, necessary in order  
 3 to fully inform purchasers as to its value for such uses.

4       49. Defendant has violated California Health & Safety Code § 110765, which makes it  
 5 unlawful for any person to misbrand any food.

6       50. Defendant has violated California Health & Safety Code § 110770, which makes it  
 7 unlawful for any person to receive in commerce any food that is misbranded or to deliver or  
 8 proffer for deliver any such food.

9       51. Defendant has violated the standard set by 21 C.F.R. § 101.13(h), which has been  
 10 incorporated by reference in the Sherman Law, by failing to include on their product labels the  
 11 nutritional information required by law.

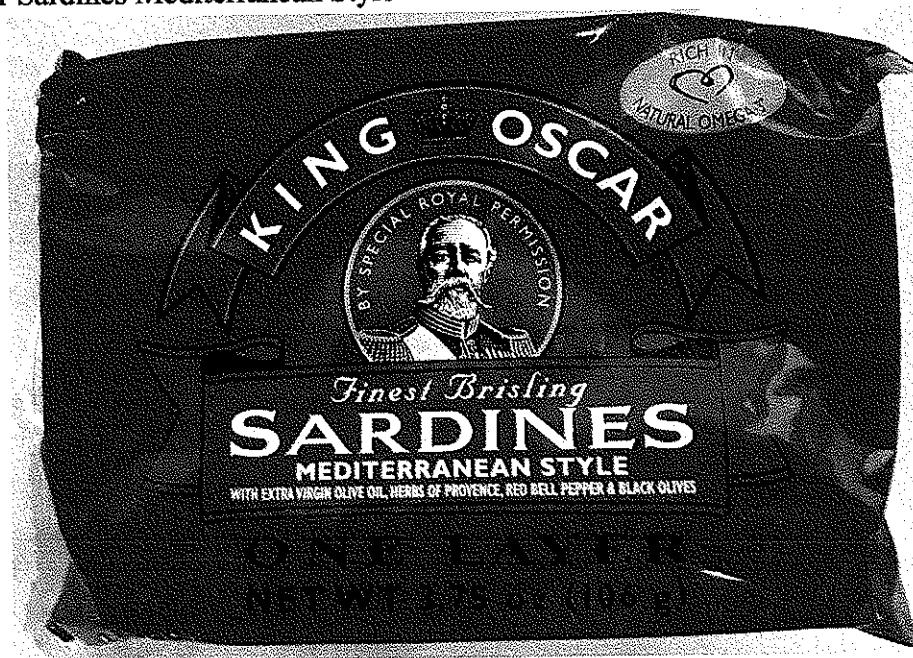
12      E. **Plaintiff Purchased Defendant's Misbranded Food Products**

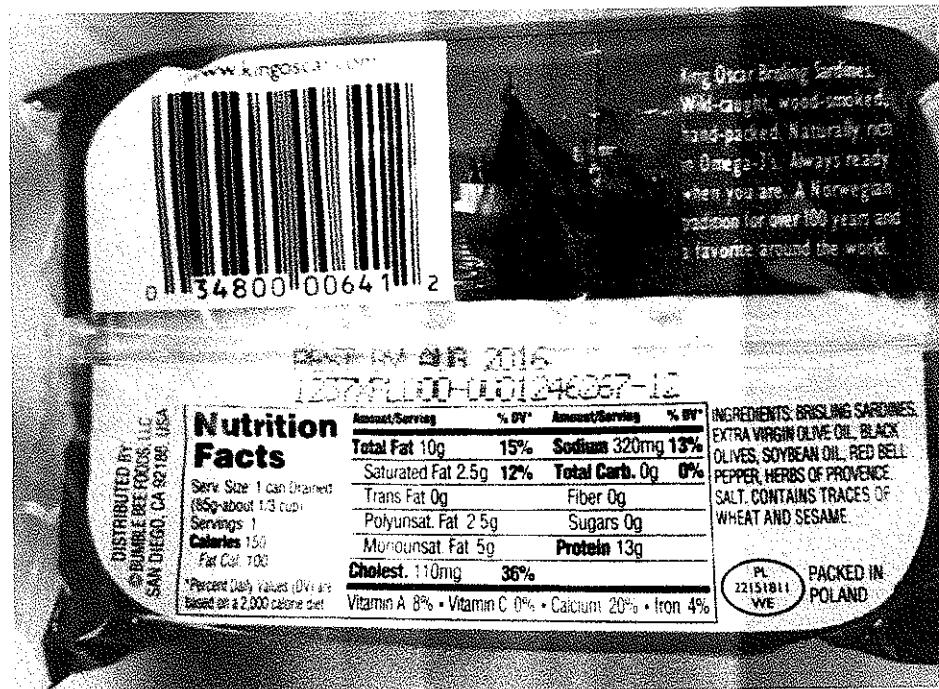
13       52. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy  
 14 diet.

15       53. Plaintiff purchased Defendant's misbranded food products at issue in this Complaint  
 16 on occasions during the Class Period.

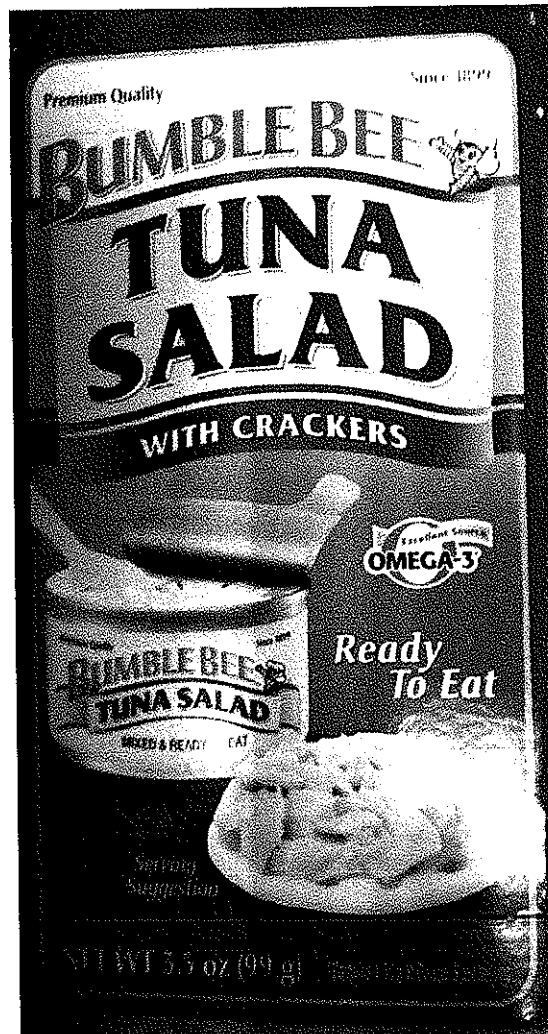
17       54. Plaintiff purchased the following products:

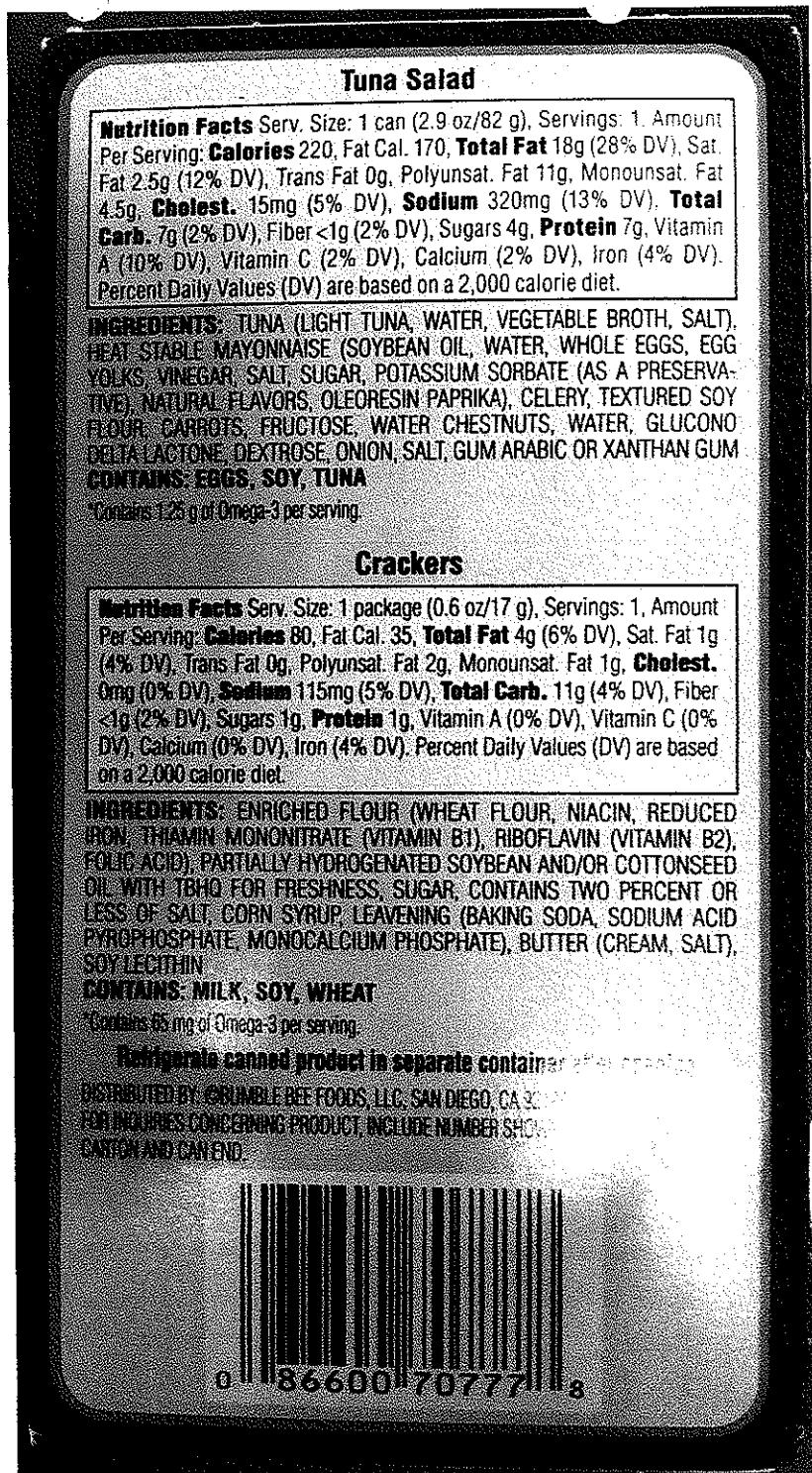
18 King Oscar Sardines Mediterranean Style





## Tuna Salad with Crackers





55. Plaintiff read the labels on Defendant's Misbranded Food Products, including the Omega 3 claims, where applicable, before purchasing them. Defendant's failure to disclose that there is no established daily value for Omega 3 and failure to disclose the presence of risk-increasing nutrients in connection with its "excellent source" or "rich in" Omega 3 claims was deceptive because it falsely conveyed to the Plaintiff the net impression that the Misbranded Food

1 Products he bought made only positive contributions to a diet, and did not contain any nutrients at  
2 levels that raised the risk of diet-related disease or a health-related condition.

3       56. Plaintiff relied on Defendant's package labeling including the "excellent source" and  
4 "rich in" Omega 3 nutrient content claim, and based and justified the decision to purchase  
5 Defendant's products in substantial part on Defendant's package labeling including the "excellent  
6 source" and "rich in" Omega 3 content claims. Plaintiff would have foregone purchasing  
7 Defendant's products and bought other products readily available at a lower price.

8       57. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's  
9 products were misbranded as set forth herein, and would not have bought the products had she  
10 known the truth about them.

11       58. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's  
12 "excellent source" and "rich in" Omega 3 nutrient content claims were unlawful and unauthorized  
13 as set forth herein, and would not have bought the products absent the unlawful "excellent  
14 source" and "rich in" Omega 3 nutrient content claim.

15       59. As a result of Defendant's misrepresentations, Plaintiff and thousands of others in the  
16 United States purchased the Misbranded Food Products at issue.

17       60. Defendant's labeling, advertising and marketing as alleged herein is false and  
18 misleading and was designed to increase sales of the products at issue. Defendant's  
19 misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a  
20 reasonable person would attach importance to Defendant's representations in determining  
21 whether to purchase the products at issue.

22       61. A reasonable person would also attach importance to whether Defendant's products  
23 were legally salable, and capable of legal possession, and to Defendants' representations about  
24 these issues in determining whether to purchase the products at issue. Plaintiff would not have  
25 purchased Defendant's Misbranded Food Products had he known they were not capable of being  
26 legally held or sold.

27  
28

**CLASS ACTION ALLEGATIONS**

2           62. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure  
 3 23(b)(2) and 23(b)(3) on behalf of the following class:

4           All persons in the United States who purchased, within the last four years,  
 5 Bumble Bee products labeled "Rich in Natural Omega-3" or "Excellent Source  
  Omega-3" (the "Class").

6           63. The following persons are expressly excluded from the Class: (1) Defendant and  
 7 their subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from  
 8 the proposed Classes; (3) governmental entities; and (4) the Court assigned to this action, and its  
 9 staff.

10          64. This action can be maintained as a class action because there is a well-defined  
 11 community of interest in the litigation and the proposed Classes are easily ascertainable.

12          65. Numerosity: Based upon Defendant's publicly available sales data with respect to the  
 13 misbranded products at issue, it is estimated that the Classes number in the thousands, and that  
 14 joinder of all Class members is impracticable.

15          66. Common Questions Predominate: This action involves common questions of law and  
 16 fact applicable to each Class member that predominate over questions that affect only individual  
 17 Class members. Thus, proof of a common set of facts will establish the right of each Class  
 18 member to recover. Questions of law and fact common to each Class member include, just for  
 19 example:

- 20         a. Whether Defendant engaged in unlawful, unfair or deceptive business  
 21 practices by failing to properly package and label their Misbranded Food  
  Products sold to consumers;
- 22         b. Whether the food products at issue were misbranded as a matter of law;
- 23         c. Whether Defendant made unlawful and misleading nutrient content claims  
 24 with respect to the food products it sold to consumers;
- 25         d. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq.*,  
 26 California Bus. & Prof. Code § 17500 *et seq.*, the Consumer Legal  
  Remedies Act, Cal. Civ. Code § 1750 *et seq.*, and the Sherman Law;
- 27         e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive  
  relief;
- 28         f. Whether Defendant's unlawful, unfair and/or deceptive practices harmed

1 Plaintiff and the Classes; and

2 k. Whether Defendant was unjustly enriched by its deceptive practices.

3 67. Typicality: Plaintiff's claims are typical of the claims of the Classes because Plaintiff  
 4 bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful,  
 5 unfair and/or fraudulent actions concern the same business practices described herein irrespective  
 6 of where they occurred or were received. Plaintiff and the Class sustained similar injuries arising  
 7 out of Defendant's conduct in violation of California law. The injuries of each member of the  
 8 Class were caused directly by Defendant's wrongful conduct. In addition, the factual  
 9 underpinning of Defendant's misconduct is common to all Class members and represents a  
 10 common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims  
 11 arise from the same practices and course of conduct that give rise to the claims of the Class  
 12 members and are based on the same legal theories.

13 68. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class.  
 14 Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to  
 15 the interests of the Class members. Plaintiff has retained highly competent and experienced class  
 16 action attorneys to represent its interests and those of the members of the Class. Plaintiff and  
 17 Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate  
 18 this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class  
 19 members and will diligently discharge those duties by vigorously seeking the maximum possible  
 20 recovery for the Class.

21 69. Superiority: There is no plain, speedy or adequate remedy other than by maintenance  
 22 of this class action. The prosecution of individual remedies by members of the Class will tend to  
 23 establish inconsistent standards of conduct for Defendant and result in the impairment of Class  
 24 members' rights and the disposition of their interests through actions to which they were not  
 25 parties. Class action treatment will permit a large number of similarly situated persons to  
 26 prosecute their common claims in a single forum simultaneously, efficiently and without the  
 27 unnecessary duplication of effort and expense that numerous individual actions would engender.  
 28 Further, as the damages suffered by individual members of the Class may be relatively small, the

1 expense and burden of individual litigation would make it difficult or impossible for individual  
2 members of the Class to redress the wrongs done to them, while an important public interest will  
3 be served by addressing the matter as a class action. Class treatment of common questions of law  
4 and fact would also be superior to multiple individual actions or piecemeal litigation in that class  
5 treatment will conserve the resources of the Court and the litigants, and will promote consistency  
6 and efficiency of adjudication.

7 70. The prerequisites to maintaining a class action for injunctive or equitable relief  
8 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds  
9 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief  
10 with respect to the Class as a whole.

11 71. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are  
12 met as questions of law or fact common to class members predominate over any questions  
13 affecting only individual members, and a class action is superior to other available methods for  
14 fairly and efficiently adjudicating the controversy.

15 72. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be  
16 encountered in the management of this action that would preclude its maintenance as a class  
17 action.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Business and Professions Code § 17200, *et seq.***

21 **Unlawful Business Acts and Practices**

22 73. Plaintiff incorporates by reference each allegation set forth above.

23 74. Defendant's conduct constitutes unlawful business acts and practices.

24 75. Defendant sold Misbranded Food Products nationwide and in California during the  
25 Class Period.

26 76. Defendant is a corporation and, therefore, is a "person" within the meaning of the  
27 Sherman Law.

28

77. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the misbranded food provisions of Article 6 of the Sherman Law.

78. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of Defendant's violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

79. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of Defendant's violations of the Consumer Legal Remedies Act, Cal. Civil Code § 1750, *et seq.*

80. Defendant sold Plaintiff and the Class Misbranded Food Products that were not capable of being sold or held legally and which were legally worthless.

81. As a result of Defendant's illegal business practices, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any Class Member any money paid for the misbranded food products.

82. Defendant's unlawful business acts present a threat and reasonable continued likelihood of deception to Plaintiff and the Class.

83. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Misbranded Food Products by Plaintiff and the Class.

**SECOND CAUSE OF ACTION**  
**Business and Professions Code § 17200, *et seq.***  
**Unfair Business Acts and Practices**

84. Plaintiff incorporates by reference each allegation set forth above.
85. Defendant's conduct as set forth herein constitutes unfair business acts and practices.
86. Defendant sold Misbranded Food Products nationwide and in California during the Class Period.

87. Plaintiff and members of the Class suffered a substantial injury by virtue of buying Defendant's Misbranded Food Products that they would not have purchased absent Defendant's illegal conduct as set forth herein.

88. Defendant's deceptive marketing, advertising, packaging and labeling of its Misbranded Food Products and its sale of unsalable misbranded products that were illegal to possess was of no benefit to consumers, and the harm to consumers and competition is substantial.

89. Defendant sold Plaintiff and the Class Misbranded Food Products that were not capable of being legally sold or held and that were legally worthless.

90. Plaintiff and the Class who purchased Defendant's Misbranded Food Products had no way of reasonably knowing that the products were misbranded and were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the injury suffered.

91. The consequences of Defendant's conduct as set forth herein outweigh any justification, motive or reason therefor. Defendant's conduct is and continues to be immoral, unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and the Class.

92. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Misbranded Food Products by Plaintiff and the Class.

**THIRD CAUSE OF ACTION**  
**Business and Professions Code § 17200, *et seq.***  
**Fraudulent Business Acts and Practices**

93. Plaintiff incorporates by reference each allegation set forth above.

94. Defendant's conduct as set forth herein constitutes fraudulent business practices under California Business and Professions Code sections § 17200, *et seq.*

95. Defendant sold Misbranded Food products nationwide and in California during the Class Period.

96. Defendant's misleading marketing, advertising, packaging and labeling of the Misbranded Food Products was likely to deceive reasonable consumers, and in fact, Plaintiff and members of the Class were deceived. Defendant has engaged in fraudulent business acts and practices.

97. Defendant's fraud and deception caused Plaintiffs and the Class to purchase Defendant's Misbranded Food Products that they would otherwise not have purchased had they known the true nature of those products.

98. Defendant sold Plaintiff and the Class misbranded food products that were not capable of being sold or held legally and that were legally worthless.

99. As a result of Defendant's conduct as set forth herein, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Misbranded Food Products by Plaintiff and the Class.

**FOURTH CAUSE OF ACTION**  
**Business and Professions Code § 17500, *et seq.***  
**Misleading and Deceptive Advertising**

100. Plaintiff incorporates by reference each allegation set forth above.

101. Plaintiff asserts this cause of action for violations of California Business and Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendants.

102. Defendant sold Misbranded Food Products nationwide and in California during the Class Period.

103. Defendant engaged in a scheme of offering Defendant's Misbranded Food Products for sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging and labeling, and other promotional materials. These materials misrepresented and/or omitted the true contents and nature of Defendant's misbranded food products. Defendant's advertisements and inducements were made within California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that such product packaging and

labeling, and promotional materials were intended as inducements to purchase Defendant's misbranded food products and are statements disseminated by Defendant to Plaintiff and the Class that were intended to reach members of the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were misleading and deceptive as set forth herein.

104. In furtherance of their plan and scheme, Defendant prepared and distributed within California and nationwide via product packaging and labeling, and other promotional materials, statements that misleadingly and deceptively represented the composition and nature of Defendant's misbranded food products. Plaintiff and the Class necessarily and reasonably relied on Defendant's materials, and were the intended targets of such representations.

105. Defendant's conduct in disseminating misleading and deceptive statements in California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable consumers by obfuscating the true composition and nature of Defendant's misbranded food products in violation of the "misleading prong" of California Business and Professions Code § 17500, *et seq.*

106. As a result of Defendant's violations of the "misleading prong" of California Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and are legally worthless.

107. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's misbranded food products by Plaintiff and the Classes.

**FIFTH CAUSE OF ACTION**  
**Business and Professions Code § 17500, *et seq.***  
**Untrue Advertising**

108. Plaintiff incorporates by reference each allegation set forth above.

1       109. Plaintiff asserts this cause of action against Defendant for violations of California  
2 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

3       110. Defendant sold Misbranded Food Products nationwide and in California during the  
4 Class Period.

5       111. Defendant engaged in a scheme of offering Defendant's Misbranded Food Products  
6 for sale to Plaintiff and the Class by way of product packaging and labeling, and other  
7 promotional materials. These materials misrepresented and/or omitted the true contents and  
8 nature of Defendant's Misbranded Food Products. Defendant's advertisements and inducements  
9 were made in California and come within the definition of advertising as contained in Business  
10 and Professions Code §17500, *et seq.* in that the product packaging and labeling, and promotional  
11 materials were intended as inducements to purchase Defendant's Misbranded Food Products, and  
12 are statements disseminated by Defendant to Plaintiff and the Class. Defendant knew, or in the  
13 exercise of reasonable care should have known, that these statements were untrue.

14       112. In furtherance of their plan and scheme, Defendant prepared and distributed in  
15 California and nationwide via product packaging and labeling, and other promotional materials,  
16 statements that falsely advertise the composition of Defendant's Misbranded Food Products, and  
17 falsely misrepresented the nature of those products. Plaintiff and the Class were the intended  
18 targets of such representations and would reasonably be deceived by Defendant's materials.

19       113. Defendant's conduct in disseminating untrue advertising throughout California and  
20 nationwide deceived Plaintiff and members of the Class by obfuscating the contents, nature and  
21 quality of Defendant's misbranded food products in violation of the "untrue prong" of California  
22 Business and Professions Code § 17500.

23       114. As a result of Defendant's violations of the "untrue prong" of California Business  
24 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of  
25 Plaintiff and the Class. Misbranded products cannot be legally sold and are legally worthless.

26       115. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are  
27 entitled to an order enjoining such future conduct by Defendant, and such other orders and  
28

judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Misbranded Food Products by Plaintiff and the Class.

**SIXTH CAUSE OF ACTION**  
**Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq.**

116. Plaintiff incorporates by reference each allegation set forth above.

117. This cause of action is brought pursuant to the CLRA. This cause of action does not currently seek monetary damages and is limited solely to injunctive relief. Plaintiff intends to amend this Complaint to seek damages in accordance with the CLRA after providing Defendant with notice pursuant to Cal. Civ. Code § 1782.

118. At the time of any amendment seeking damages under the CLRA, Plaintiff will demonstrate that the violations of the CLRA by Defendant were willful, oppressive and fraudulent, thus supporting an award of punitive damages.

119. Consequently, Plaintiff and the Class will be entitled to actual and punitive damages against Defendant for their violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the Class will be entitled to an order enjoining the above-described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

120. Defendant's actions, representations and conduct have violated, and continue to violate the CLRA, because they extend to transactions that are intended to result, or which have resulted, in the sale of goods to consumers.

121. Defendant sold Misbranded Food Products nationwide and in California during the Class Period.

122. Plaintiff and members of the Classes are “consumers” as that term is defined by the CLRA in Cal. Civ. Code §1761(d).

123. Defendant Misbranded Food Products were and are “goods” within the meaning of Cal. Civ. Code §1761(a).

124. By engaging in the conduct set forth herein, Defendant violated and continues to violate Sections 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant misrepresents the particular ingredients, characteristics, uses, benefits and quantities of the goods.

125. By engaging in the conduct set forth herein, Defendant violated and continue to violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant misrepresents the particular standard, quality or grade of the goods.

126. By engaging in the conduct set forth herein, Defendant violated and continue to violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant advertises goods with the intent not to sell the goods as advertised.

127. By engaging in the conduct set forth herein, Defendant has violated and continue to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant represents that a subject of a transaction has been supplied in accordance with a previous representation when they have not.

128. Plaintiff requests that the Court enjoin Defendant from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If Defendant is not restrained from engaging in these practices in the future, Plaintiff and the Class will continue to suffer harm.

**SEVENTH CAUSE OF ACTION**  
**Restitution Based on Unjust Enrichment/Quasi-Contract**

129. Plaintiff incorporates by reference each allegation set forth above.

130. As a result of Defendant's fraudulent and misleading labeling, advertising, marketing and sales of Defendant's Misbranded Food Products, Defendant was enriched at the expense of Plaintiff and the Class.

131. Defendant sold Misbranded Food Products to Plaintiff and the Class that were not capable of being sold or held legally and which were legally worthless. It would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits Defendant received from Plaintiff and the Class, in light of the fact that the products were not what Defendant purported them to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to Plaintiff and the Class of all monies paid to Defendant for the products at issue.

132. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

**EIGHTH CAUSE OF ACTION**  
**Beverly-Song Act (Cal. Civ. Code § 1790, et seq.)**

133. Plaintiff incorporates by reference each allegation set forth above.

134. Plaintiff and members of the Class are “buyers” as defined by Cal. Civ. Code § 1791(b).

135. Defendant is a “manufacturer” and “sellers” as defined by Cal. Civ. Code § 1791(j) & (l).

136. Defendant's food products are "consumables" as defined by Cal. Civ. Code § 1791(d).

137. Defendant's nutrient and health content claims constitute "express warranties" as defined by Cal. Civ. Code § 1791.2.

138. Defendant, through its package labels, creates express warranties by making affirmations of fact and promising that its misbranded food products comply with food labeling regulations under federal and California law.

139. Despite Defendant's express warranties regarding its food products, these products do not comply with food labeling regulations under federal and California law.

140. Defendant breached its express warranties regarding Defendant's misbranded food products in violation of Cal. Civ. Code § 1790, *et seq.*

141. Defendants sold Plaintiff and members of the Class Defendant's misbranded food products that were not capable of being sold or held legally and which were legally worthless.

142. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial pursuant to Cal. Civ. Code § 1794.

143. Defendant's breaches of warranty were willful, warranting the recovery of civil penalties pursuant to Cal. Civ. Code § 1794.

**NINTH CAUSE OF ACTION**  
**Magnuson-Moss Act (15 U.S.C. § 2301, *et seq.*)**

144. Plaintiff incorporates by reference each allegation set forth above.

145. Plaintiff and members of the Class are “consumers” as defined by 15 U.S.C. § 2301(3).

146. Defendant is a "supplier" and "warrantor" as defined by 15 U.S.C. § 2301(4) & (5).

147. Defendant's food products are "consumer products" as defined by 15 U.S.C. § 2301(1).

148. Defendant's nutrient and health content claims constitute "express warranties."

149. Defendant, through its package labels, creates express warranties by making affirmations of fact and promising that its misbranded food products comply with food labeling regulations under federal and California law.

150. Despite Defendant's express warranties regarding its food products, these products do not comply with food labeling regulations under federal and California law.

151. Defendant breached its express warranties regarding its misbranded food products in violation of 15 U.S.C. §§ 2301, *et seq.*

152. Defendant sold Plaintiff and members of the Classes Defendant's misbranded food products that were not capable of being sold or held legally and which were legally worthless.

153. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of her claims.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, and on behalf of the general public, prays for judgment against Defendant as follows:

A. For an order certifying this case as a class action and appointing Plaintiff and her counsel to represent the Classes;

B. For an order awarding, as appropriate, damages, restitution or disgorgement to Plaintiff and the Class for all causes of action other than the CLRA, as Plaintiff does not seek monetary relief under the CLRA, but intends to amend her Complaint to seek such relief;

C. For an order requiring Defendant to immediately cease and desist from selling its Misbranded Food Products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

D. For all equitable remedies available pursuant to Cal. Civ. Code § 1780;

E. For an order awarding attorneys' fees and costs;

E. For an order awarding punitive damages;

G For an order awarding pre-and post-judgment interest; and

H For an order providing such further relief as this Court deems proper.

Dated: April 12, 2012

Respectfully submitted,

Bern F. Peirce Gore

Ben F. Pierce Gore (SBN 128515)  
PRATT & ASSOCIATES  
1901 S. Bascom Avenue, Suite 35  
Campbell, CA 95008  
Telephone: (408) 429-6506  
Fax: (408) 369-0752  
[ngore@prattattorneys.com](mailto:ngore@prattattorneys.com)

1 Jay Nelkin  
2 Carol Nelkin  
3 Stuart M. Nelkin  
4 NELKIN & NELKIN, P.C.  
5 5417 Chaucer Drive  
6 P.O. Box 25303  
7 Houston, Texas 77005  
Telephone: (713) 526-4500  
Facsimile: (713) 526-8915  
[jnelkin@nelkinpc.com](mailto:jnelkin@nelkinpc.com)  
[cnelkin@nelkinpc.com](mailto:cnelkin@nelkinpc.com)  
[snelkin@nelkinpc.com](mailto:snelkin@nelkinpc.com)

8 Don Barrett  
9 David McMullan, Jr.  
10 Brian Herrington  
11 Katherine B. Riley  
12 BARRETT LAW GROUP, P.A.  
13 P.O. Box 927  
14 404 Court Square North  
Lexington, MS 39095  
Telephone: (662) 834-2488  
Toll Free: (877) 816-4443  
Fax: (662) 834-2628  
[dbarrett@barrettlawgroup.com](mailto:dbarrett@barrettlawgroup.com)  
[donbarrettpa@yahoo.com](mailto:donbarrettpa@yahoo.com)  
[bherrington@barrettlawgroup.com](mailto:bherrington@barrettlawgroup.com)  
[kbriley@barrettlawgroup.com](mailto:kbriley@barrettlawgroup.com)  
[kbriphone@yahoo.com](mailto:kbriphone@yahoo.com)  
[dmcmullan@barrettlawgroup.com](mailto:dmcmullan@barrettlawgroup.com)

18 Charles Barrett  
19 CHARLES BARRETT, P.C.  
20 6518 Hwy. 100, Suite 210  
Nashville, TN 37205  
21 Telephone: (615) 515-3393  
Fax: (615) 515-3395  
[charles@cfbfir.com](mailto:charles@cfbfir.com)

23 Richard Barrett  
24 LAW OFFICES OF RICHARD R. BARRETT, PLLC  
25 2086 Old Taylor Road, Suite 1011  
Oxford, MS 38655  
Telephone: (662) 380-5018  
26 Fax: (866) 430-5459  
[rrb@rrblawfirm.net](mailto:rrb@rrblawfirm.net)

1 J. Price Coleman  
2 COLEMAN LAW FIRM  
3 1100 Tyler Avenue, Suite 102  
4 Oxford, MS 38655  
Telephone: (662) 236-0047  
Fax: (662) 513-0072  
colemanlawfirmpa@bellsouth.net

5 Dewitt M. Lovelace  
6 Alex Peet  
7 LOVELACE LAW FIRM, P.A.  
12870 U.S. Hwy 98 West, Suite 200  
Miramar Beach, FL 32550  
8 Telephone: (850) 837-6020  
Fax: (850) 837-4093  
dml@lovelacelaw.com

9  
10 David Shelton  
11 ATTORNEY AT LAW  
12 1223 Jackson Avenue East, Suite 202  
Oxford, MS 38655  
13 Telephone: (662) 281-1212  
Fax: (662) 281-1312  
david@davidsheltonpllc.com

14  
15 Keith M. Fleischman  
16 Frank Karam  
17 Ananda N. Chaudhuri  
FLEISCHMAN LAW FIRM  
565 Fifth Avenue, 7<sup>th</sup> Floor  
18 New York, New York 10017  
Telephone: 212-880-9571  
keith@fleischmanlawfirm.com  
frank@fkaramlaw.com  
achaudhuri@fleischmanlawfirm.com

19  
20  
21 *Attorneys for Plaintiff*  
22  
23  
24  
25  
26  
27  
28